

Message Text

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ACTION DLOS-06

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

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INR-07 INT-05 JUSE-00 L-03 NSAE-00 NSC-05 NSF-01

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CONFIDENTIAL USUN 3667

FROM US DEL LOS

E.O. 11652: GDS
TAGS: PLOS
SUBJECT: INFORMAL PLENARY ON DISPUTE SETTLEMENT SEPTEMBER 9, 1976

1. INFORMAL PLENARY SEPTEMBER 9 COMPLETED REVIEW OF ANNEX 1C
(STATUTE OF THE LOS TRIBUNAL).

2. LENGTHY AND CONFUSING DISCUSSION OF ARTICLES 32 AND 33
FOCUSED ON SUCH ISSUES AS 1) ACCESS FOR INTERNATIONAL
ORGANIZATIONS AND PRIVATE PARTIES TO INTERVENE, 2) WHETHER
INTERVENOR SHOULD BE BOUND BY DECISION, 3) WHETHER
INTERVENTION RIGHT WOULD OPEN DOOR TO UNWIELDY NUMBER OF
PARTICIPANTS, 4) NEED TO CLARIFY FIJI PROPOSALS REPORTED
SEPTEL, 5) WHETHER ARTICLE 33 SHOULD BE RETAINED, 6) EFFECT OF
DECISION IN A SECOND SIMILAR DISPUTE WHERE ONLY ONE PARTY
TO THE LATER DISPUTE HAD INTERVENED IN THE EARLIER DISPUTE,
AND 7) WHETHER ARTICLE 33 SHOULD BE REPLACED WITH AN
ADVISORY OPINION PROCEDURE OR AN ADVISORY OPINION PROCEDURE
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SHOULD BE ADDED IN ANY EVENT.

3. FRANCE, WITH SUPPORT OF USSR AND ISRAEL, WISHED TO
BE VERY CAUTIOUS ON QUESTION OF INTERVENTION. THEY, AND

VENEZUELA, WISHED TO LIMIT RIGHT OF INTERVENTION TO STATES. FRANCE THOUGHT THAT STATES WHICH HAD NOT ACCEPTED LOS TRIBUNAL JURISDICTION SHOULD BE ABLE NEVERTHELESS TO INTERVENE WITH ACCEPTING JURISDICTION. USSR SOUGHT DELETION OF ARTICLE 33 BECAUSE IT SUGGESTED LOS TRIBUNAL IS SUPERIOR TO OTHER PROCEDURES LISTED IN ARTICLE 9. U.S. SUGGESTED MAKING ARTICLE 33 AND ARTICLE IN MAIN TEXT OF PART IV SO IT WOULD APPLY TO ALL PROCEDURES EQUALLY, BUT USSR CAME BACK TO REJECT ARTICLE NONETHELESS, WITH SUPPORT FROM UK AND ISRAEL.

4. PERU, WITH SUPPORT FROM SPAIN, THOUGHT STATEMENT IN ARTICLE 33 THAT JUDGEMENT IS BINDING ON INTERVENOR IS TOO BROAD SINCE INTERVENTION MAY BE LIMITED TO ONLY ONE ASPECT OF THE CASE, AND SUGGESTED LIMITING BINDING EFFECT TO THOSE ASPECTS ON WHICH THE INTERVENOR HAS CONCERNED HIMSELF. SPAIN DESCRIBED PROBLEMS THAT WOULD ARISE IN A SECOND AND SIMILAR DISPUTE WHERE ONLY ONE PARTY TO THE LATER SUIT HAD INTERVENED IN THE EARLIER SUIT. ISRAEL THOUGHT ARTICLE 33 WAS TOO BROAD IN THAT ISRAELI REP COULD NOT THINK OF A SUIT BEFORE LOS TRIBUNAL THAT DID NOT INVOLVE INTERPRETATION OR APPLICATION OF THE LOS CONVENTION. US POINTED OUT THAT ARTICLE 33 IS TOO NARROW SINCE, UNDER ARTICLE 22 OF ANNEX IC, TRIBUNAL MAY INTERPRET AND APPLY OTHER RELATED AGREEMENTS. ACCORDINGLY, US WITH SUPPORT OF BAHRAIN, SUGGESTED BROADENING ARTICLE 33 SO THAT ALL PARTIES TO ANY TREATY BEING INTERPRETED OR APPLIED COULD INTERVENE IF THEY WISHED.

5. INDIA AND YUGOSLAVIA ASKED WHETHER REFERENCE TO QTE STATE UNQTE IN ARTICLE 32 AND TO QTE CONTRACTING PARTY UNQTE IN ARTICLE 33 WAS AN INTENTIONAL DISTRACTION. AMERASINGHE REPLIED THAT IT WAS DELIBERATE TO ALLOW STATES NOT PARTY TO THE LOS CONVENTION TO INTERVENE. USSR HAS OPPOSED SUCH ACCESS FOR NON-PARTIES IN ARTICLE 32 AND US NOW SUPPORTED SUCH ACCESS. YUGOSLAVIA
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EXPLAINED THAT ARTICLE 32 COULD BE INTERPRETED AS APPLYING TO SITUATIONS OTHER THAN THOSE INVOLVING APPLICATION OF THE CONVENTION, AND FOR THAT REASON REQUIRES PROOF OF LEGAL INTEREST IN THE DISPUTE.

6. NETHERLANDS, REP SUGGESTED THAT THERE SHOULD BE A WAY FOR CONTRACTING PARTIES TO SUBMIT OBSERVATIONS TO THE TRIBUNAL WITHOUT BEING BOUND BY DECISION AND POINTED OUT THAT LATER DISPUTE ON SIMILAR ISSUE MAY BE BROUGHT TO A DIFFERENT PROCEDURE UNDER ARTICLE 9. HE OPPOSED PRESENT TEXT AND SUGGESTED ADOPTING PROCEDURE SIMILAR TO THAT USED IN ICJ ADVISORY OPINION CASES. FRANCE SUPPORTED NETHERLANDS AND SUGGESTED THAT ARTICLE

33 BE CONFINED TO CONVENTIONS OTHER THAN LOS CONVENTION AND THAT PARA 2 POSED A DISINCENTIVE TO INTERVENTION. AMERASINGHE SAID THAT, IN THAT CASE, A SEPARATE ARTICLE WOULD BE NEEDED FOR ADVISORY OPINIONS. US, WITH SOME SUPPORT FROM INDIA, SUGGESTED THAT TWO STATES ACTING TOGETHER MIGHT BE PERMITTED TO SEEK AN ADVISORY OPINION, BUT THIS SUGGESTION WAS OPPOSED BY ISRAEL, UK, FRANCE, USSR, AND BULGARIA. ECUADOR PROPOSED ARTICLE ALLOWING A COURT OF A STATE TO SEEK AN ADVISORY OPINION ON ANY MATTER RELATING TO THE LAW OF THE SEA, AND RECEIVED SOME SUPPORT FROM ALGERIA.

7. BAHRAIN, WITH SUPPORT OF US, SUGGESTED ADDING AN ARTICLE ALONG THE LINES OF ARTICLE 61 OF THE ICJ STATUTE (REVISION OF JUDGEMENTS) IN ADDITION TO ARTICLE 34 OF ANNEX 1C. CAMEROON THOUGHT ARTICLE 35 (PARTY'S COSTS) WAS UNCLEAR AND US EXPLAINED PRACTICE OF THE ICJ IN THIS REGARD. ARTICLE 36 (AMENDMENT) WAS DEFERRED TO FINAL CLAUSES DEBATE, THOUGH INDIA THOUGHT PARA. 2 SHOULD BE IN THE LOS STATUTE.

8. AMERASINGHE ANNOUNCED HIS INTENTION TO TAKE UP FINAL CLAUSES IN FORMAL PLNEARY ON TUESDAY NEXT WEEK.
BENNETT

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